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TRANSCRIPT OF PROCEEDINGS
BEFORE THE
PUBLIC UTILITY COMMISSION OF TEXAS
AUSTIN, TEXAS

COMPLAINT AND REQUEST FOR   )
INTERIM RULING OF EL PASO   )
NETWORKS, LLC FOR POST   )   PUC DOCKET NO.
INTERCONNECTION AGREEMENT   )   25004
DISPUTE RESOLUTION WITH   )
SOUTHWESTERN BELL TELEPHONE   )
COMPANY   )

PETITION OF EL PASO NETWORKS,)
LLC FOR ARBITRATION OF AN   )   PUC DOCKET NO.
INTERCONNECTION AGREEMENT WITH)   25188
SOUTHWESTERN BELL TELEPHONE   )
COMPANY   )

HEARING ON THE MERITS
MONDAY, APRIL 22, 2002

BE IT REMEMBERED THAT at approximately
8:30 a.m., on Monday, the 22nd day of April 2002,
the above-entitled matter came on for hearing
before the Public Utility Commission of Texas,
1701 North Congress Ave., William B. Travis State
Office Building 78701, Commissioners' Hearing
Room, before JENNIFER FAGAN and STEPHEN MENDOZA,
Arbitrators; and the following proceedings were
reported by William C. Beardmore, Lou Ray and
Janis Simon, Certified Shorthand Reporters of:
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11 is that it should not be required.

12   Q   Irregardless of whether it needs

13 splicing?

14   A   (Townes) Irregardless.

15   Q   I'm sorry, I can't see all your name

16 cards, so I'm going to have to ask Mr. Waken, if

17 you could, to identify yourself for my purposes.

18   A   (Waken) That's me.

19   Q   Thank you very much.

20   Mr. Waken, in your rebuttal testimony

21 on Page 8 -- and this is in Docket 25188 --

22   A   (Waken) Okay.

23   Q   In your testimony you testified on the

24 issue about the TIRKS, and you stated that TIRKS

25 does not contain all information about fiber

1   location availability or utilization. Is that

2   correct?

3   A   (Waken) That's correct.

4   Q   And you further testified that TIRKS

5   only maintains terminated fibers to specific A

6   and Z locations that are being used to provide

7   retail or wholesale services.

8   A   (Waken) TIRKS reliably maintains

9   terminated fiber between A and Z locations. It

10 may also have unterminated fiber, but not

11 reliably.

12   Q   And TIRKS, sir, is primarily a database

13 for recording -- keeping track of existing

14 circuits. Is that correct?

15   A   (Waken) Existing network and existing

16 services that use that network, yes.

17   Q   Obviously, sir, you're familiar with

18 TIRKS database?

19   A   (Waken) Yes, I am.

20   Q   You're familiar with how it operates?

21   A   (Waken) In a basic way, yes.

22   Q   Have you ever used the TIRKS database

23 to locate or determine whether service was

24 available for a customer.

25   A   (Waken) Yes, I have.

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1   Q   And you've had training on TIRKS?

2   A   (Waken) Yes, I have.

3   Q   And SWBT regularly uses TIRKS to

4 determine whether facilities are available --

5 whether circuits or facilities are available to

6 provide service?

7   A   (Waken) I don't think I understand the

8 question.

9   Q   Is there an organization in

10   Southwestern Bell that primarily uses the TIRKS

11   database?

12   A   (Waken)   There are many organizations

13   in Southwestern Bell that use the TIRKS

14   databases.

15   Q   And of those many organizations that

16   use the TIRKS database, do many of them use the

17   TIRKS database for responding to customer

18   requests for service?

19   A   (Waken)   Yes, they do.

20   Q   And they use that TIRKS database in

21   response to those requests to determine whether

22   service is available?

23   A   (Waken)   They will use the TIRKS

24   database to look at an existing facility to

25   determine if it has spare capacity to fulfill a

1   customer request.

2   Q   And that existing facility would

3   include, for instance, a SONET terminal at one

4   end of a particular circuit?

5   A   (Waken)   For example.

6   Q   And in the TIRKS database you will be

7   able to see what type of SONET terminal that

8 was; for instance, whether it was an OC-3

9 terminal?

10   A   (Waken) That's correct.

11   Q   And there would be a code that would

12 identify whether that terminal was, you know, an

13 FLM 150 or an FLM 600 or an FLM 2400?

14   A   (Waken) That's correct.

15   Q   And will -- the TIRKS database will

16 also tell you, sir -- isn't it correct -- I'm

17 sorry.

18   Won't the TIRKS database also be able

19 to tell you how that terminal is configured?

20   A   (Waken) Yes, it will.

21   Q   So you will be able to tell from that

22 how many line cards, for instance, were set up

23 in that SONET terminal?

24   A   (Waken) You would be able to tell how

25 many cards the engineer told the inventory

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1 organization he had to order to put in that

2 terminal.

3   Q   And, sir, would you be able to tell

4 from that terminal -- from TIRKS database how

5 many circuits were in place to that specific

6 terminal?

7   A   (Waken)   With quite a lot of work you

8   could go through and determine all of the

9   circuits that were working in that terminal,

10 yes.

11   Q   So by taking the total -- since you

12 know the capacity of the terminal because you

13 know whether it's an OC-3 or an OC-12 or an

14 OC-48, right -- you will be able to tell from

15 that terminal that it's an OC-12, an OC-3 or an

16 OC-48?

17   A   (Waken)   Yes.

18   Q   And you'll be able to tell from the

19 circuit what kind of circuit it is and what

20 capacity that circuit is providing?

21   A   (Waken)   Yes.

22   Q   So by subtracting the total amount of

23 circuit and the total capacity from the overall

24 capacity of that terminal, you'll be able to

25 tell what is spare on that terminal. Isn't that

1   correct?

2   A   (Waken)   Not necessarily. If you're

3   familiar with the way that a SONET ring is

4   engineered, only one of the factors is the

5   number of terminations on that terminal. Other

6   factors that affect the capacity are the other

7   terminals on that SONET ring which may use

8   capacity at different points on the ring. And

9   so when you're looking for a spare capacity, it

10   may involve a lot more complicated calculations

11   than what you just described.

12   Q   You would have to go to each SONET

13   terminal on that ring and determine the capacity

14   on that ring?

15   A   (Waken) In effect, yes.

16   Q   So, if we were assuming,

17   hypothetically, Mr. Waken -- actually, let's not

18   assume hypothetically. Let me ask you: Does

19   Southwestern Bell configure SONET rings that

20   only involve two nodes, customer location and

21   the central office?

22   A   (Waken) There are nodes -- there are

23   rings that have two nodes, yes.

24   Q   So if we assumed -- now we'll go to my

25   hypothetical. If we assumed, hypothetically,

1   that at both ends of the SONET ring you had an

2   OC-12 equipment as the terminal at the central

3   office and at the customer location, that's a

4   possible configuration, isn't it?

5   A   (Waken) Yes.

6   Q   And TIRKS would be able to tell you

7   that there were hypothetically six DS3s in use

8   on that circuit?

9   A   (Waken) Yes.

10   Q   And by doing subtraction, you would be

11 able to then tell that there were six DS3s

12 available on that OC-12?

13   A   (Waken) In that simple configuration,

14 yes.

15   MR. BOBECK: Can I ask how much

16 time I have left?

17   (Discussion off the record)

18   Q   Mr. Smith -- Roman Smith, on Page 13 of

19 your direct testimony, you testify that EPN is

20 assuming that SWBT has obligations to provide

21 certain types of information. Is that your

22 testimony?

23   A   (R. Smith) I'm sorry, could you repeat

24 the question?

25   Q   Certainly. I'll read to you from your

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1   testimony, sir. Page 13 of your direct, do you

2   have that in front of you?

3   A   (R. Smith) Yes.

1   Q   (Adair) I'm talking about testing it,

2 though, as opposed to repairing it or changing

3 it. To what degree of testing, as Mr. Nekula

4 described, would you perform for yourself?

5   A   (Weydeck) Again, the tests that we

6 would perform, we would put the service up and

7 run. If it didn't run, then we would choose

8 another fiber or we would choose another cable.

9 The last resort we would do would be to -- we --

10 the last thing we would want to do would be to

11 go in and repair.

12   Q   (Adair) Okay. So when you say you

13 would "put the service up and running," would

14 you put forward the full service you intended to

15 try to run over that fiber and see if it worked?

16   A   (Weydeck) Right.

17   Q   (Adair) As opposed to just an

18 end-to-end test to see if it --

19   A   (Weydeck) We already have the

20 end-to-end test readings on that fiber, so we

21 know what --

22   Q   (Adair) So your next step is, then, to

23 turn up the service --

24   A   (Weydeck) Yes, sir.

25   Q   (Adair) -- and hope it works.

1   A   (Weydeck) It generally works, yes,

2 sir.

3   MR. ADAIR: Okay. I have nothing

4 more on Issue 14, if anybody else had anything.

5 All right.

6   Q   (Adair) Issue 15, the testing that

7 we're discussing here in this issue --

8 Southwestern Bell, I guess this would be for you

9 to start with. Is it your position that any of

10 this testing is intrusive?

11   A   (Weydeck) No, we do tests on our

12 network all the time. We have nine invasive

13 tests that we're doing: Checking the status of

14 the circuit, checking copper cables. We have a

15 lit test that constantly is noninvasive-type

16 testing.

17   Q   (Adair) Let me try to rephrase the

18 question in the negative. The testing that's

19 being referred to in EPN's testimony, is it your

20 contention that none of that testing is

21 intrusive?

22   A   (Weydeck) The tests that we perform

23 outside of the maintenance window is

24 nonintrusive, yes, sir.

25   Q   (Adair)   All of it?

1   A   (Weydeck)   Yes, sir.

2   Q   (Adair)   Okay.   EPN, what would your

3   position be on this notification issue if all of

4   the testing at issue was nonintrusive?

5   A   (Smithson)   First, I would like to say

6   that some testing is intended to be nonintrusive

7   but does not always turn out to be.   There are

8   procedures that you undertake, which, if all

9   goes well, there will be no interruption of

10   service, no glitches.   But there's always the

11   possibility of that happening, and those things

12   have to be weighed to determine whether or not

13   they're done in the maintenance window or not.

14   Pardon me.

15   But in terms of the need for

16   notification for maintenance window activities,

17   I'm afraid I'm about not to answer your

18   question.

19   (Laughter)

20   Q   (Adair)   So far I think you've told me

21   that you believe, although they maintain all of

22   this testing as nonintrusive, you believe that

23   some of it may inadvertently turn out to be

24 intrusive, in fact?

25   A   (Smithson) Sure.

1   Q   (Adair) What percentage?

2   A   (Smithson) This is unscientific,

3 obviously. I would say 10 percent in our own

4 experience.

5   Q   (Adair) Southwestern Bell, how do you

6 feel about that 10 percent figure?

7   A   (Smithson) If I can just add one

8 point. We have performance measurements that

9 indicate the trouble report submittal that our

10 various CLECs submit to us, and I don't believe

11 that EPN has a 10 percent trouble report rate

12 submitted to Southwestern Bell.

13   Q   (Adair) I don't think we're talking

14 about trouble reports. I wanted to know what

15 percentage of the tests that were allowed to be

16 nonintrusive, in fact, turned out to be

17 intrusive.

18   A   (Weydeck) Well, I guess I would just

19 couch it by saying these are the same tests that

20 we perform on our circuits all the time. It's

21 not a different set of tests that we would do on

22 EPN's that would be intrusive. It's the same

23 set, and we, to my knowledge, don't have

24 complaints from our other customers that this is

25 a problem.

1   Q   (Adair) Do you have a percentage

2 figure you would like to put forward as more

3 accurate than the 10 percent they allege?

4   A   (Weydeck) No, sir, I don't.

5   Q   (Adair) So do you have any reason to

6 dispute the 10 percent?

7   A   (Weydeck) Yes, sir, I do. I don't

8 believe -- I believe that we would be seeing

9 more trouble reports from our customers, or if

10 we were having these trouble reports from more

11 customers, we would stop the tests.

12   Q   (Adair) So give me a ballpark; 10

13 percent is too high, so what's --

14   A   (Weydeck) I think 10 percent is way

15 too high, but I cannot guess at a percentage.

16 I'm sorry.

17   Q   (Adair) Okay. EPN?

18   A   (Smithson) It probably would be good

19 to differentiate between monitoring activities

20 and overt activities on the network. I -- it

21 sounds to me as if what you're referring to is

22 probably your ongoing, day-to-day noninvasive

23 testing is probably monitoring the facilities,

24 looking for alarms, those sorts of things. And

25 those are patently nonintrusive.

1   But when activities need to take place

2 on the network, be they -- and we use the term

3 "testing." But often what's actually happening

4 is a circuit role needs to happen or work needs

5 to be done in and around equipment that's

6 active. Those are the kinds of activities that

7 we notify our customers of -- okay -- and we're

8 about to do them because there's always a

9 possibility something will go wrong.

10   Q   (Adair) For purposes of an

11 interconnection agreement and attempting to

12 resolve the issue that's in dispute on No. 15

13 here, would it be possible to list and separate

14 those issues or those tests that are regular

15 monitoring, nonintrusive types of tests and

16 those that you strongly believe are more

17 proactive and potentially intrusive?

18   A   (Smithson) Yes, I believe it would be.

19   Q   (Adair) Such that, perhaps, contract

20 language could be written to have a notification

21 on those that are intrusive and no notification

22 of those that are not?

23   A   (Smithson) Yes, I believe it could be.

24   Q   (Adair) Yes, sir?

25   A   (Weydeck) I guess a statement that I

1 want to -- I guess a statement that I want to --

2 I think Mr. Smithson --

3   A   (Smithson) Yes.

4   A   (Weydeck) -- is accurate in what he's

5 saying, that these are monitoring functions that

6 we do is nonintrusive. Where he talks about

7 roles and working in the fiber, we only perform

8 those during our maintenance window between --

9 our establishment window I think is between

10 12:00 midnight and 6:00 a.m. That's the only

11 time we'll go in and do those for ourselves

12 and --

13   Q   (Adair) And is the wholesale customer,

14 such as EPN, notified in advance when you're

15 going to do those on their circuits?

16   A   (Weydeck) Yes, they are.

17   A   (R. Smith) Yes, we are. All that

18 we're asking is that the current policy of

19 notification be part of our contract.

20   A   (R. Smith) May I step in? The

21   contract language that's already agreed to

22   within the contract -- and as Mr. Smithson

23   stated in his direct and rebuttal testimony --

24   it says, "mutually agreeable time frames."

25   A   (Smithson) But it does not -- but it

1   doesn't -- I'm sorry. I cut you off.

2   Q   (R. Smith) And I was just going to say

3   that he's already stated in his testimony that

4   it works well. It's a process that works well,

5   and we have intrusive testing --

6   Q   (Adair) Okay. I think I understand.

7   Is that -- we're talking about one party wants

8   to contractualize what appears to be --

9   A   (R. Smith) Methods and procedures.

10   Q   (Adair) The norm. Okay.

11   MR. ADAIR: That's all I have on

12   15.

13   MS. FAGAN: Okay.

14   MR. ADAIR: And that's all I have

15   for Panel 2, in fact.

16   MS. FAGAN: Okay. Well, then,

17   let's go off the record for a moment and let

18   Panel 3 convene.

19   (Brief Recess)

20   MS. FAGAN: Let's go back on the

21 record. Panel 3 is almost completely assembled.

22 Mr. Smith will be joining us soon, but let's go

23 ahead and begin with Southwestern Bell's

24 redirect of Mr. Fitzsimmons -- or

25 Dr. Fitzsimmons. I apologize.

1   MR. BROWN: Thank you..

2   PANEL NO. 3

3   PANTIOS MANIAS, AUGUST ANKUM,

4   LEO A. WROBEL, ROMAN SMITH,

5   WILLIAM WEYDECK AND DAVID SMITHSON

6 having been previously duly sworn testified as

7 follows:

8   REDIRECT EXAMINATION

9 BY MR. BROWN:

10   Q   Why is impairment under Section 251 so

11 important with respect to UNEs?

12   A   (Fitzsimmons) Impairment is crucial to

13 understanding UNEs. It's impairment that sets

14 the presumption within the Act. Now, the

15 presumption is not that unless we can figure a

16 good reason not to make the ILEC make its

17 facilities available to the CLECs or information

18 available to CLECs, then they should make it

19 available. The presumption that's described by

20 the necessary impair standard is that it should

21 not be made available, that the ILECs facilities

22 should not be made available to the CLECs simply

23 because they exist or simply because we can't

24 think of a good reason on that particular

25 facility or that particular type of information

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1 to hold it back.

2   The presumption is that unless the CLEC

3 is impaired, unless it's impaired in its

4 ability -- that's not -- I shouldn't say that --

5 "its ability" -- CLECs, as a group, unless

6 competitors, as a group, are impaired in their

7 ability to provide viable competition without

8 the facility or without the information, then it

9 should not be required that the ILEC provide it.

10 Now, that's consistent with the goals of the

11 Act, and it was the fact that the FCC ignored

12 that as a limiting standard that caused the

13 Supreme Court to remand the FCC's First Report

14 and Order and say, "You have to consider this is

15 a limiting standard within the rational goals of

16 the Act."

17   Q   (Brown) You were asked earlier -- I

18 don't know; it was Mr. Sifuentes or somebody

19 else but -- about the FCC's five factors

20 relating to impairment.

21   A   (Fitzsimmons) I remember.

22   Q   (Brown) Okay. What did the FCC say

23 was the most persuasive evidence of

24 alternatives -- of the availability of

25 alternatives, competitive alternatives?

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1   A   (Fitzsimmons) Yeah. I believe it's

2 almost in the same breath when the FCC says that

3 although it's reasonable to consider the factors

4 that were listed earlier today of cost and

5 timeliness and quality and ubiquity and other

6 factors associated with a CLEC's ability to

7 purchase alternatives or to self-supply, it's

8 reasonable to consider all those. But the most

9 persuasive evidence about a CLEC's ability to

10 self-supply or get alternative sources, from

11 both an economics and an operational

12 perspective, is the marketplace. And it's

13 information about the marketplace that the FCC

14 considered and was discussed earlier in the

15 supplemental order of clarification that the